

STAFF ANALYSIS

STATUTORY PROVISIONS AND PROCEDURAL REQUIREMENTS

Request

Three impasse appeals have been submitted to Airport Land Use Commission (ALUC) using the provisions available in Public Utilities Code, Section 21670.2(a). This section assigns ALUC the responsibility to hear impasse¹ appeals related to airport planning. The appealing public agencies are Culver City, the City of Ontario, and San Bernardino County and are referred to in this report as %Appellants+. These agencies share the same impasse issues and are jointly represented by Barbara Lichman of Buchalter Nemer.

Application Requirements

Rights to Appeal

Any public agency involved in an impasse over the airport planning of another public agency, where the airport or airport's planning area boundary extends into the County of Los Angeles may appeal to the ALUC. Public agencies are defined in the Los Angeles County Airport Land Use Commission Review Procedures ("Review Procedures")² Section 5.2.1 as a county, city, school district, or other government body. The Appellants are public agencies. The County of San Bernardino encompasses the City of Ontario, which has an airport and its airport planning area extends into Los Angeles county and is affected by Los Angeles International Airport (%LAX+) 's airport planning. The City of Culver City is geographically proximate to LAX and therefore its constituents are likewise affected by LAX operations and its future planning efforts.

Time Limits

The Review Procedures, Section 5.2.2 state that an appeal must be initiated within 30 days of the date of final decision by the governing body on the airport planning project. The Los Angeles City Council is the governing body of the airport planning project, and it took the final actions that led to this impasse on May 21, 2013. The impasse appeal applications were received that same day. The applications were incomplete at that time, but additional information was subsequently received on June 27, 2013, within 30 days as required. At the time the missing information was received, staff determined the applications met the filing requirements.

¹ Los Angeles County Airport Land Use Commission Review Procedures Review Procedures (%Review Procedures+), Section 1.2.16, defines impasse as any significant unresolved issue between the appellant public agency and the public agency proposing the project regarding property airport planning as it relates to the project at issue.

² To formalize its operating procedures, on December 1, 2004, the ALUC adopted the Review Procedures. These procedures explain the impasse appeal process and how an appeal case will be reviewed.

Required Documentation

The Review Procedures stipulates that an appeal must contain documentation in the form of a resolution or formal action approved or adopted by a majority of the governing body of the appellant public agency indicating its intent to file the appeal. The Appellants have supplied documentation to this effect and such documents are provided as attachments. A filing fee is also required and has been paid by each appellant.

ALUC Role in Reviewing Impasse Appeals

Pursuant to the State Aeronautics Act³ (%Act+), the ALUC has the responsibility to coordinate airport land use compatibility planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare. In an instance where a public agency reaches an impasse related to an airport planning decision of another public agency, the ALUC may be called upon to hear the appeal.

ALUC's review of appeals considers whether the impasse issues presented by appellants are consistent with the broad statutory purposes of the Act and whether the action taken by the public agency whose decision led to the appeal is in conflict with the intent of the Act. In these appeal situations, ALUC's role is as a planning coordinator using its expertise in airport land use compatibility planning. Reference or consistency with the Airport Land Use Compatibility Plan (ALUCP) is not necessary. ALUC's focus is consistency with the Act of the decision taken by the public agency whose action led to the impasse. For an impasse to exist, the PUC notes that a decision of a local agency has caused the impasse. The Act, Section 21670 begins by identifying its intent:

- (1) It is in the public interest to provide for the orderly development of each public use airport in the state and the area surrounding these airports so as to promote the overall goals and objectives of the California noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.
- (2) It is the purpose of this article to protect public health safety and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

IMPASSE ISSUE

To establish whether an impasse situation exists, staff convened separate meetings with both the Appellants and the City of Los Angeles (%City+). After the meetings, staff understood that a disagreement, which has led to an impasse does exist between the Appellants and the City. The impasse is over the significance and intent of the May 21,

³ The State Aeronautics Act is contained within PUC Division 9.

2013 action taken by the City Council which reduced the options from further consideration to a preferred alternative. By making this decision early in the process, the Appellants believe the City has excluded them from meaningful participation in the future planning for LAX that includes considering a full range of options. The identification of options and selection of one came through a process contained in the City planning document, LAX Specific Plan Amendment Study (SPAS).

The LAX SPAS is a study that identifies an array of airport improvement options. Its purpose has been to identify at a broad, conceptual level the benefits and drawbacks of various airport improvement options so that further detailed analysis may be narrowed to only those options that are viable. The requirement that a study of this type be prepared came from a Stipulated Agreement that allowed the LAX Master Plan to move forward after its approval in 2004. The Stipulated Agreement excluded certain Yellow Light+projects from the LAX Master Plan and required that more detailed environmental and project level analysis be undertaken before these projects could be approved. The airfield components of LAX SPAS are limited to the North Airfield complex. Improvements have already been made to the South Airfield complex as part of the approval of the LAX Master Plan Green Light+projects. North airfield options include potential runway movement in that complex by up to 260 feet. Runway movement would remain mostly within the present boundary of the airport, but would alter the area affected by noise and safety concerns by the amount the runway are moved. After analyzing nine alternatives and/or combinations thereof, the LAX SPAS concludes with one recommended solution. This was the May 21, 2013 selection of the staff-recommended (preferred) alternative.

Your commission will recall that on March 27, 2013, you met as ALUC and held a public hearing to discuss the consistency of the series of plan amendments that the City was adopting related to the LAX SPAS project with the Los Angeles County Airport Land Use Compatibility Plan (ALUCP). ALUC found the amendments and the ALUCP were consistent. ALUC did not opine on the consistency of the airport improvements included in the LAX SPAS project because the action to approve particular improvements was not before the ALUC at that time. The improvements themselves have yet to be acted upon or presented to the local agency, Los Angeles City Council. Therefore, specific improvements were not before the ALUC.

It is worth noting that not all airport improvements necessarily come to the ALUC for review (PUC section 21676.5(b)). The PUC and the Review Procedures enumerate the types of actions requiring ALUC review. A runway movement, such as that contemplated by the City-staff-recommended alternative would affect the longitudinal and latitudinal coordinates of flights at LAX and would necessitate a reissuance or amendment of LAX's current state aviation permit, thus triggering ALUC review (PUC section 21664.5; Review Procedures section 1.5.1(d)).

The PUC does not require, or suggest ALUC involvement in the formation of airport improvement options. It only requires that before final approval of a change to an airport that affects noise and safety in the surrounding community, such as a runway

move, that ALUC review the change against the ALUCP. It is only through its role as coordinator of airport planning in impasse situations that ALUC can participate in the broader issues that are the subject of this impasse.

The City explains that the preferred alternative establishes a ~~platform~~ from which further study will be evaluated. The Appellants believe more analysis is needed before a selection is made to ensure minimal disturbances to existing structures and uses that would become affected were the City to narrow its options as it has done. The planning action that has reduced the options to one and has led to the impasse situation is contained in document - City of Los Angeles File No. 13-0285, Findings Before the Council of the City of Los Angeles, Attached to letter dated May 1, 2013. Item 7 of that document recommends the Council:

Select the staff-recommended alternative as the best alternative to the problems that the Yellow Light Projects were designed to address, subject to future detailed planning, engineering, and project-level environmental review, such as project-level review of individual improvements under the California Environmental Quality Act (~~CEQA~~) and evaluation and approval processes of the Federal Aviation Administration (FAA). Approval of the staff-recommended alternative would provide the platform from which the specific details of the proposed improvements would be further defined and evaluated in connection with current and future FAA standards. (Council of City of Los Angeles, File No. 13-0285)

The Council followed with an approval action on May 21, 2013. The City's reason to select a specific alternative at this early stage was to focus further study at a project level and prepare necessary environmental analysis pursuant to the National Environmental Policy Act (~~NEPA~~) and CEQA. NEPA reporting is required because the City will be seeking Federal Aviation Administration (FAA) permitting and funding. The City's action in May also included approving a Programmatic FEIR for the LAX SPAS project. Although CEQA would require project level environmental analyses on future projects, the process the City has used has been interpreted by the Appellants as excluding them from further involvement in future planning for LAX.

The City and Appellants disagree over what happened when the City took action in May. They disagree over what the decision authorized in terms of further environmental review and the range of alternatives that will be considered in the future.

The City explains that selecting the staff-recommended alternative allowed further study to be narrowed to those options associated with the selected alternative. In the resolution, the term used is creating a ~~platform~~ from which further study can be launched. This indicates that options will be limited to variants of the preferred alternative. The Appellants believe the City's action approved a project. ALUC is not in a position to determine which position or assertion is correct, but, it is clear that misunderstandings and lack of clarity over the significance of this action has severely

affected the ability of the interested parties in communicating and participating in coordinated orderly development of the airport.

How the selection process has played out and affected the potential for orderly development of LAX is an aspect of the impasse where ALUC has a role as airport coordinator because it directly relates to the intent of the Act. The Act, Paragraph 2 (quoted above) explains that to achieve orderly development of airports, adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around airports is needed. To achieve orderly development land use agencies must coordinate their planning efforts. This can only occur with clear and open communication.

CONCLUSION

ALUC staff has worked with the Appellants and the City. The City promises that further analysis and exploration of more than just the preferred options will be considered before a decision on airfield improvements is made. In conversations, City staff has provided useful information and given reasonable explanations for why the process of selecting an alternative at this stage is needed. Unfortunately, the City has not clearly articulated in their public documents how their process will work and how the recent decision to select one alternative and then base future planning off that alternative will affect the ability of a concerned local agency to remain part of the airport planning discussion. The lack of clarity and the possibility that fully analyzed future options may only be versions of the preferred alternative has led to mistrust and misunderstanding with the Appellants and may result in future land use agencies not being involved in future airport planning. More work is needed by the City to clarify its process so planning agencies and the public understand what is happening and how they will be affected.

The appellants are seeking a reconsideration of the ALUC consistency determination of March 27, 2013 through this appeal. This is not possible because it is not what is intended with the impasse appeal procedure. The ALUC does not consider appeals of its prior actions. It is also important to note that there is no new information to suggest the consistency determination made on March 27, 2013 would be different if it were heard again now. The actions that were before ALUC were consistent with the ALUCP.

LEGAL NOTIFICATION AND PUBLIC OUTREACH

Pursuant to the provisions contained in the Review Procedures, notice of the public hearing was provided by placing an advertisement in The Daily Breeze newspaper a minimum of ten days prior to the hearing.

PUBLIC COMMENTS

No comments have been received from the public.

POSSIBLE ALUC ACTIONS

ALUC may not act on, and therefore must **deny**, aspects of the appeal where it not provided authority by the PUC. This relates to the Appellants request to reconsider the

ALUC consistency determination of March 27, 2013. ALUC is not the appellant body for its own action.

The Commission may consider one of the two choices related to the airport planning process and selection of a preferred alternative:

1. **Uphold the appeal** by finding that the airport planning process has not been made clear and selection of one alternative at this stage in the process may preclude consideration of other solutions that minimize the public's exposure to excessive noise and safety hazards within areas around public airports. For this reason, the airport planning process is inconsistent with the intent of the Act.
2. **Deny the appeal** by finding that the action taken by the Los Angeles City Council on May 21, 2013 was preceded by airport planning efforts were coordinated and would allow for orderly development of LAX. For this reason the airport planning process is consistent with the intent of the Act.

STAFF RECOMMENDATION

The following recommendation is made prior to the public hearing and is subject to change based upon testimony and/or documentary evidence presented at the public hearing:

Staff recommends that ALUC deny aspects of the appeal related to reconsidering its March 27, 2013 consistency determination, but **uphold** the appeal as it related the airport planning process and selection of one alternative at this early stage.

Staff suggests that providing for orderly development and minimizing the public exposure to noise and safety hazard affects from airports requires that information continue to be collected from the affected stakeholders. Narrowing the options to one and eliminating further consideration of all other options too early in the process could also preclude viable options that still meet the purposes of the Act. An early focus on one option that precludes consideration of other solutions may compromise efforts to develop LAX in an orderly way that minimizes the public's exposure to excessive noise and safety from the airport.

ALUC is not assigned a role in the PUC to direct an airport or public agency to manage their project a certain way; it may only provide an opinion on whether the actions that result from the project are consistent or inconsistent with the Act. In this case, the action by the City has left the situation unclear to land use planning agencies regarding what may be included in future project level studies and environmental analysis and what their role may be.

NEXT STEPS

If ALUC decides as staff is recommending, staff anticipates that the City should respond by addressing the issues associated with the early selection of an alternative that focusing subsequent options exclusively off that option. A process map or similar

document that will explain to the lay person the process being used and the significance of key decision points would be needed. This information could supplement the documents that have already gone before the City Council.

SUGGESTED MOTION:

I MOVE THAT THE AIRPORT LAND USE COMMISSION:

- 1. UPHOLD ALL THREE APPEALS AS THEY RELATE TO PREMATURELY FOCUSING ON ONE AIRPORT IMPROVEMENT OPTIONS BECAUSE THE AIRPORT PLANNING PROCESS HAS NOT BEEN MADE CLEAR AND SELECTION OF ONE ALTERNATIVE AT THIS STAGE IN THE PROCESS MAY PRECLUDE CONSIDERATION OF OTHER SOLUTIONS THAT MINIMIZE THE PUBLIC'S EXPOSURE TO EXCESSIVE NOISE AND SAFETY HAZARDS WITHIN AREAS AROUND PUBLIC AIRPORTS. FOR THIS REASON, THE AIRPORT PLANNING PROCESS IS INCONSISTENT WITH THE INTENT OF THE ACT, AND**
- 2. DENY ASPECTS OF EACH OF THE THREE APPEALS RELATE TO ALUC RECONSIDERING IT FINDING OF CONSISTENCY OF THE PLAN AMENDMENTS ASSOCIATED WITH THE LAX SPAS PROJECT ON MARCH 27, 2013. ALUC IS NOT THE APPELLANT BODY FOR ITS OWN ACTIONS.**

Prepared by Mark Child, Assistant Administrator, Current Planning Division
Reviewed by Jon Sanabria, Deputy Director, Advance Planning Division

Attachments:
Draft Resolution
Resolutions from Appellant Governing Bodies
Correspondence

MC
8/29/2013